desertion. He had declined to live elsewhere than with his parents, although his wife's temperament appeared to clash continually with that of her mother-in-law. *Held*, that the decree will not be granted as the desertion was justified. *McCampbell* v. *McCampbell*, 63 Pittsb. Leg. J. 641 (C. P. Allegheny Co., Pa.).

Under the Pennsylvania statute, a desertion, to be sufficient ground for a divorce, must be wilful, malicious, and without reasonable cause. See PURDON'S DIG. PA. STAT. (1905), 1230. Although of various forms, nearly all desertion statutes have been construed to allow a divorce for any desertion unless excused by something which would be a ground for granting a divorce to the deserting spouse. *Detrick's Appeals*, 117 Pa. St. 452, 11 Atl. 882; *Craig* v. *Craig*, 90 Ark. 40, 117 S. W. 765. See 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, §§ 1664, 1753. *Contra*, *Laing* v. *Laing*, 21 N. J. Eq. 248, 250. Since the husband has the right to determine the locus of the home, the mere election to live with his parents, provided adequate support and a comfortable home are given the wife, can present no ground for divorce. *Rodenbaugh* v. *Rodenbaugh*, 17 Pa. Co. Ct. R. 477. See 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, §§ 1713, 1716. Under extreme circumstances, however, to compel the wife to live with her mother-in-law may amount to such cruelty as would be ground for divorce; and, accordingly, in such cases the wife's desertion is justified. *Shinn* v. *Shinn*, 51 N. J. Eq. 78, 24 Atl. 1022. *Cf. Dailey's Appeal*, 10 Wkly. Notes Cas. 420. However, the mere existence of an unfriendly spirit between the mother-in-law and the wife, as in the principal case, can hardly be called sufficient cruelty to justify the latter in deserting her husband. *Jones* v. *Jones*, 55 Mo. App. 523; *Loux* v. *Loux*, 57 N. J. Eq. 561, 41 Atl. 358. *Cf. Mossa* v. *Mossa*, 123 N. Y. App. Div. 400, 107 N. Y. Supp. 1044. *Contra*, *Powell* v. *Powell*, 29 Vt. 148; *Field* v. *Field*, 79 Misc. (N. Y.) 557, 139 N. Y. Supp. 673.

EMINENT DOMAIN — DAMAGES — VALUE OF FEE UNDER HIGHWAY. — The city took by condemnation the fee to water-covered shore land, already subject to a public easement of passage. *Held*, that the owner of the fee may recover substantial damages. *Matter of City of New York* (*Main Street*), 216 N. Y. 67.

The owner of the fee of a street possesses valuable property in his right to make any use of the land that will not interfere with the public easement of passage. *Viliski* v. *Minneapolis*, 40 Minn. 304, 41 N. W. 1050; *Appleton* v. *New York*, 163 App. Div. 680, 148 N. Y. Supp. 870; *Allen* v. *Boston*, 159 Mass. 324, 34 N. E. 519; *Dell Rapids Co.* v. *Dell Rapids*, 11 S. D. 116, 75 N. W. 898. See NICHOLS, EMINENT DOMAIN, §§ 70, 71. It must follow that the condemnation of the fee of a street should be attended by the payment of substantial damages. *Buffalo* v. *Pratt*, 131 N. Y. 293, 30 N. E. 233. See 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., 1805. There can be no valid distinction in principle between the condemnation of the fee of a street and the fee of land under water subject to a right of passage, for here, too, the fee carries with it valuable rights. *Steers* v. *Brooklyn*, 101 N. Y. 51, 4 N. E. 7. See NICHOLS, EMINENT DOMAIN, § 171; FARNHAM, WATERS AND WATER RIGHTS, § 113 *b*.

EVIDENCE — HEARSAY: IN GENERAL — DECLARATIONS OF WIFE ADMISSIBLE AGAINST HUSBAND AS CO-CONSPIRATOR. — On an indictment for assault with intent to murder, evidence was given that the defendant and his wife planned to commit murder. The acts and declarations of the wife during conversations with the intended victim just before and at the time of the alleged assault were offered by the prosecution. *Held*, that these are admissible. *Thompson* v. *State*, 178 S. W. (Tex.) 1192.

At common law husband and wife, standing alone, cannot be conspirators. 1 Hawk. P. C., 8 ed., 448, § 8; *People* v. *Miller*, 82 Cal. 107, 22 Pac. 934.

Texas courts have said that the rule has been changed by statute in that state. See *Smith* v. *State*, 48 Tex. App. 233, 89 S. W. 817, 821; TEXAS PENAL CODE, 1895, §§ 36, 76, 86, 87, 958. But even at common law it is submitted that the principal case is correct. It cannot, it is true, be supported by the rule of evidence that the acts and declarations of one conspirator in furtherance of the common purpose are admissible against any other conspirator. See WIGMORE, EVIDENCE, § 1079; WHARTON, EVIDENCE, § 1205. This rule, however, does not depend on any notion peculiar to conspiracy, but on the fundamental conception that so far as a defendant's liability under the substantive law may be affected by the acts and declarations of another, those acts and declarations are admissible. See *United States* v. *Gooding*, 12 Wheat. (U. S.) 460, 469; *State* v. *Moeller*, 20 N. Dak. 114, 120, 126 N. W. 568, 571. See WIGMORE, EVIDENCE, § 1077. The relationship of principal and accessory, joint principals, or principal and agent between the defendant and his wife may entail such liability. *State* v. *Vertrees*, 33 Nev. 509, 112 Pac. 42; *State* v. *Dickerhoff*, 127 Ia. 404, 103 N. W. 350. See *Jones* v. *Monson*, 137 Wis. 478, 484, 119 N. W. 179, 182; *Price* v. *Price*, 91 Ia. 693, 696, 60 N. W. 202, 205; BISHOP, CRIMINAL LAW, § 631. There was evidence in the principal case to justify a jury finding that one of these relationships existed and that the declarations admitted were made in furtherance of the purpose for which it existed. But at common law one spouse may not testify against the other and this rule extends to declarations proved by third persons. See *Ray* v. *State*, 43 Tex. Cr. R. 234, 236, 64 S. W. 1057, 1058; WIGMORE, EVIDENCE, § 2232. But the rule does not apply in civil suits when there is an agency between the spouses. See WIGMORE, EVIDENCE, § 2232. There is no reason to distinguish criminal from civil cases in applying rules of evidence. See *United States* v. *Gooding*, *supra*. It is submitted, therefore, that where in a criminal case a relationship exists between the spouses that is fundamentally one of agency, the acts and declarations of one may be used against the other.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION BONDS — SURETY'S LIABILITY TO ASSIGNEE OF ADMINISTRATOR. — An administrator was entitled to a share of the estate. He assigned this interest, and later committed a *devastavit*. The assignee now sues the surety on the administration bond. *Held*, that he may recover. *Muller* v. *National Surety Co.*, 154 N. Y. Supp. 1096.

An assignee is not subject to cross claims which arise between the assignor and the obligor after the assignment. But an exceptional doctrine is applied where a trustee who is also a *cestui* assigns his beneficial interest, or an executor and trustee who is given a legacy assigns that legacy. It is then held, on the ground that the executor is only intended to get a deferred interest, that the assigned share must bear in full the loss even from a *devastavit* committed after the assignment. *Morris* v. *Livie*, 1 Y. & C. Ch. 380; *Doering* v. *Doering*, 42 Ch. Div. 203; *Hart's Estate*, 203 Pa. St. 503, 53 Atl. 373. The fact that there is no trust in the principal case offers no ground for distinction. But it is submitted that the rule is only for the protection of the other *cestuis* or legatees, and that there is no reason to treat the assignable interest as deferred to cross claims of the surety. Thus, though the administrator cannot recover in his capacity as legatee, for he is liable to a counterclaim for indemnification on the bond, the right of the assignee is unimpaired. Indeed, it seems that the administrator himself may recover for the benefit of the estate. See *Wolfinger* v. *Forsman*, 6 Pa. St. 294, 295.

INDICTMENT AND INFORMATION — CONSTITUTIONALITY OF STATUTE DISPENSING WITH GRAND JURY ON PLEA OF GUILTY. — On prosecution for breaking and entering, and larceny, the prisoner filed a plea of guilty, under a statute dispensing with the necessity of indictment by grand jury in such